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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,013	11/13/2000	Gerald M. Clement	207001	6625

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TWO PRUDENTIAL PLAZA  
SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER

KRECK, JOHN J

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/622,013

Applicant(s)

CLEMENT, GERALD M.

Examiner

John Kreck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-21 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 17-21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

The amendment dated 3/3/03 has been entered.

1. Newly submitted claim 30 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The invention of claim 30 and the originally presented invention do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the invention claimed in claim 30 is the separate wall and membrane portions with edges. The invention originally claimed lacks this feature, and thus unity of invention is lacking.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 30 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins (U.S. Patent number 5,645,373).

Jenkins shows a dike section having a length comprising a first bladder (142 see the left side of figure 10) formed of a flexible material to contain a liquid, the first bladder comprising a tube closed at its ends and having a side wall and a longitudinal axis between the ends; a membrane (143) extending across the interior of the tube parallel to the long axis and at least one port (30a); the membrane being solid; a second bladder (see the right side of figure 10) extending in side by side relation along the length of the dike; at least one wall (below 34) dividing the first from the second bladder as called for in claim 26.

Jenkins also shows a first elongate bladder; second elongate bladder; the first and second bladders in side by side relation; at least one wall formed to prevent flow from the first to the second bladder; and a substantially liquid tight sheet of material (41) positioned against the containment side and extending out away from the dike over a ground surface as called for in claim 27.

Jenkins also shows the elongate dike bladder comprising a tube closed at the ends and having a wall and a long axis; the tube formed to be flexible and water tight; at least one port (30a) for access to the interior and a membrane across the interior of the tube, the membrane being solid as called for in claim 28.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 17-19,21,24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller , et al. (U.S. Patent number 5,865,564) in view of any one of Givens (U.S. Patent Number 4,890,569); Borgquist (U.S. Patent Number 4,807,405); or Parish (U.S. Patent Number 4,655,008).

Miller shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (fig. 4) for access to the interior of the bladder.

Miller fails to teach the pressure release valves in the wall of the bladder.

It is well known and old when using inflatable bladders to place pressure release valves in the wall of the inflatable bladder. This is done to prevent rupture of the bladder (as shown by Parrish—see col. 3, lines 48-55 and by Givens—see col. 3, lines 34-39) or to simplify the deflation of the bladder (as shown by Borgquist—see col. 4, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Miller to have a pressure release valve in the wall of the bladder, as called for in claim 17, in order to prevent rupture of the bladder, or to facilitate deflation.

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Miller teaches the end folded and the sleeve as called for in claim 18.

Miller also teaches the membrane (32) as called for in claim 19.

Miller also teaches the membrane being perforated (col. 3, line 45) as called for in claim 21.

Miller also teaches the dike as called for in claim 24.

Miller also teaches the liquid as called for in claim 25.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, et al. and Givens; Borgquist; or Parish as applied to claim 17 above, and further in view of Matsuoka, et al. (U.S. Patent Number 5,127,766)

The Miller reference fails to teach the pressure monitoring means.

The Matsuoka reference shows a similar bladder system which includes a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level. This is done to allow the pressure to be increased in order to prevent buckling of the bladder.

It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Miller device (as modified above) to have included a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level as called for in claim 23, in order to allow the pressure to be increased in order to prevent buckling of the bladder.

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3. Claims 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins in view of any one of Givens (U.S. Patent Number 4,890,569); Borgquist (U.S. Patent Number 4,807,405); or Parish (U.S. Patent Number 4,655,008).

Jenkins shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (30a) for access to the interior of the bladder.

Jenkins fails to teach the pressure release valves in the wall of the bladder.

It is well known and old when using inflatable bladders to place pressure release valves in the wall of the inflatable bladder. This is done to prevent rupture of the bladder (as shown by Parrish—see col. 3, lines 48-55 and by Givens—see col. 3, lines 34-39) or to simplify the deflation of the bladder (as shown by Borgquist—see col. 4, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Jenkins to have a pressure release valve in the wall of the bladder, as called for in claim 17, in order to prevent rupture of the bladder, or to facilitate deflation.

Jenkins also shows the membrane (143, see figure 10) as called for in claim 19.

Jenkins also shows the solid membrane as called for in claim 20.

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, et al. in view of Matsuoka, et al. (U.S. Patent Number 5,127,766)

Miller shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (fig. 4) for access to the interior of the bladder.

The Miller reference fails to teach the pressure monitoring means.

The Matsuoka reference shows a similar bladder system which includes a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level. This is done to allow the pressure to be increased in order to prevent buckling of the bladder.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Miller device to have included a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level as called for in claim 29, in order to allow the pressure to be increased in order to prevent buckling of the bladder.

#### ***Allowable Subject Matter***

2. Claims 1-14, and 16 are allowed.

#### ***Response to Arguments***

3. Applicant's arguments concerning the pressure release valve or the sensor have been fully considered but they are not persuasive.

In response to applicant's argument that the Givens, Borquist, Parish, and Matsuoka references are nonanalogous art, it has been held that a prior art reference



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must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, each of the cited references are directed to fluid filled bladders, and problems such as high pressure, which may cause rupture; or low pressure, which may cause buckling. These are reasonably pertinent to the problems with which the applicant was concerned. Applicant's arguments that the properties of gas are fundamentally different to the liquid in the Miller reference are not at all persuasive.

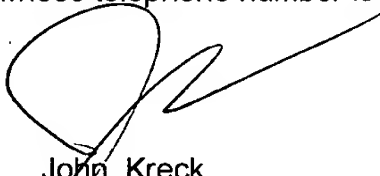
It is noted that in the office action dated 12/5/01 (remailed 8/9/02); claims 12 and 20 were not rejected, due to an oversight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 6:00 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3597 for regular communications and (703)305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.



John Kreck  
Examiner  
Art Unit 3673

JJK  
April 3, 2003